



Department of Defense DIRECTIVE

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Incorporating Change 1, February 18, 1991

GC, DoD

SUBJECT: International Agreements

References: (a) DoD Directive 5530.3, subject as above, December 6, 1979 (hereby canceled)
(b) DoD Instruction 2050.1, "Delegated Approval Authority to Negotiate and Conclude International Agreements," July 6, 1977 (hereby canceled)
(c) DoD Directive 3310.1, "International Intelligence Agreements," October 22, 1982, (hereby canceled)
(d) through (m), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Supersedes and consolidates references (a), (b), and (c) to take into account regulations published by the Department of State (enclosure 3) to implement the Case Act (enclosure 4), and to accommodate organizational changes within the Office of the Secretary of Defense (OSD).

1.2. Revises DoD procedures to implement the Case Act (enclosure 4) as interpreted by the Department of State (DoS) (enclosure 3).

1.3. Assigns responsibilities for central repositories of international agreements within the Department of Defense.

1.4. Assigns responsibility for controlling the negotiation and the conclusion of agreements with foreign governments and international organizations by personnel of the Department of Defense, its components, commands, or other organizational elements.

1.5. Assigns the authority to approve or conduct such negotiation and conclusion, or to delegate such authority for specified categories of such agreements.

1.6. Establishes procedures by which such approval shall be obtained before the initiation of negotiations.

1.7. Establishes procedures concerning resolution of questions of compliance by parties to international agreements within the scope of this Directive.

2. APPLICABILITY AND SCOPE

This Directive applies to:

2.1. The OSD, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General, Department of Defense (IG, DoD), and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2.2. Those international agreements concerning matters within the functional responsibilities of any DoD Component.

3. DEFINITIONS

The terms used in this Directive are defined in enclosure 2.

4. RESPONSIBILITIES

4.1. The General Counsel of the Department of Defense (GC, DoD) is responsible for sections 3. through 11., above and below, of this Directive.

4.2. The Under Secretary of Defense for Policy (USD(P)) is responsible for sections 12. and 13., below, of this Directive.

5. CENTRAL REPOSITORIES

5.1. Except for agreements referred to in subparagraphs 5.2.1. or 5.2.2., below, two reproducible copies of each international agreement shall be sent to the GC, DoD (Washington, DC, 20301-1600), by the single office of record for the DoD Component responsible for the agreement not later than 20 days after the agreement enters into force. Unless one of the two copies is the original, each of the copies shall be certified to be a true copy of the original agreement. Copies may be certified by any officer or U.S. civilian employee authorized by U.S. law to administer oaths or to make acknowledgments. A background statement meeting the requirements of enclosure 3 and in the format of enclosure 6 shall accompany the transmitted text.

5.2. The GC, DoD, shall maintain the central repository (including an index updated at least once per year) for all international agreements and accompanying legal and fiscal memoranda when required, which are coordinated, negotiated, or concluded by DoD personnel, other than:

5.2.1. Agreements in the intelligence field.

5.2.2. Standardization agreements, excluded from the provisions of this Directive at enclosure 2.

5.3. The Defense Intelligence Agency (DIA) and the National Security Agency (NSA) each shall maintain a central repository of international agreements in the intelligence field that are coordinated, negotiated, or concluded on its behalf. The repository office shall maintain an index of all such agreements; a copy of the updated index, including all agreements that entered into force or were amended during the previous calendar year (except for sensitive or compartmented agreements, as determined by GC, DIA and GC, NSA), shall be provided to the GC, DoD by January 31 of each year. The index shall include, at a minimum,

5.3.1. The title of the agreement.

5.3.2. The name of the country with which the agreement has been concluded.

5.3.3. The date the agreement entered into force.

5.3.4. A brief statement of the general purpose of the agreement.

5.3.5. The date of expiration of the agreement. For sensitive or compartmented agreements, GC, DIA and GC, NSA shall make separate arrangements with the GC, DoD to ensure that cognizance of such agreements is maintained.

5.4. When a question arises as to whether a document or set of documents constitutes an international agreement as defined in enclosure 2, such document or documents shall be treated as an international agreement and processed in accordance with sections 5. above, 6., and 7., below. The DoS shall make the final determination of this question as specified in paragraph 7.4., below.

6. PROCEDURES

6.1. Delegated authority to approve the negotiation and conclusion of international agreements, including the institution of summary procedures referred to in paragraph 9.1., below, shall be accomplished through DoD Component regulations implementing this Directive. The standard procedures in section 9., below, shall be used by OSD officials in exercising their delegated authority to grant or deny requests for authority to negotiate and conclude international agreements.

6.2. Delegated authority to approve the negotiation and conclusion of international agreements shall be exercised in full consultation with other DoD Components having an interest in the subject, as follows:

6.2.1. Before negotiation, military commands and other DoD organizational elements assigned to or located within the geographic areas of responsibility of Unified Commands shall advise the appropriate Unified Commands of any international negotiations that might have significant impact on the plans and programs of such commands, and shall furnish them with a copy of each agreement upon its conclusion.

6.2.2. Before negotiation, other organizations that negotiate an agreement that might have a significant impact on the Unified and Specified Commands shall so advise the OJCS or the military command concerned, as appropriate, and shall furnish them with a copy of each agreement upon its conclusion.

6.2.3. Those agreements in paragraphs 13.1. and 13.2., below, which involve significant changes in logistic support for U.S. Armed Forces (including base adjustments) with an impact on joint plans and programs, shall be coordinated with the OJCS or its designee.

6.2.4. Security provisions for agreements involving or likely to involve the release of classified military information, classified technology, or classified materiel shall be coordinated with the Deputy Under Secretary of Defense (Policy), (DUSD(P)), before making any commitment to representatives of a foreign government or international organization. Such agreements shall be consistent with the National Disclosure Policy (NDP-1) and shall meet the conditions for release provided therein.

6.2.5. Before negotiation, agreements that have potential impact on the development or procurement of standardized weapon systems or equipment within the NATO shall be coordinated with the Under Secretary of Defense (Acquisition) (USD(A)) and the Assistant Secretary of Defense for International Security Policy (ASD(ISP)) as early in the development or procurement stage as possible. DoD Directive 2010.6 (reference (d)) provides policy guidance on NATO standardization.

6.2.6. Nothing in this Directive rescinds or limits the authorities and responsibilities assigned to the Director, Defense Security Assistance Agency (DSAA), under DoD Directive 5105.38 (reference (e)). Any agreements involving Security Assistance programs shall be coordinated with the Director, DSAA.

6.3. Nothing in sections 8., 12., or 13., below, shall be construed as altering such authorities as may be delegated in other DoD Directives or Instructions to the heads of organizational elements of the OSD or other DoD Components to develop and prescribe DoD positions, policies, and plans for carrying out their functional responsibilities. DoD officials authorized under this Directive to conduct negotiations shall ensure that negotiations are conducted in accordance with such positions, plans, and policies.

6.4. Within the Office of the Under Secretary of Defense for Policy (OUSD(P)):

6.4.1. The Communications Management Division is designated as the single office of record for receiving requests submitted under subparagraph 10.1.1., below, for authority to negotiate or conclude an international agreement.

6.4.2. The responsibilities of the USD(P) under paragraphs 12.2. and 12.3., below, the functions outlined in subparagraphs 10.1.2. through 10.1.5., below, the approval authority under section 9., below, which has not been delegated in section 14., below, and the approval authority under paragraph 8.4., below, normally shall be exercised by the cognizant Deputy Under Secretary of Defense (DUSD), Deputy Assistant Secretary of Defense (DASD) or by a Director not reporting to a DUSD or DASD for matters falling within the responsibility of that individual.

6.4.3. Staff responsibility for the implementation of sections 12. and 13., below, of this Directive is assigned to the Director, Office of Foreign Military Rights Affairs.

7. CASE ACT IMPLEMENTATION

7.1. The Case Act (enclosure 4) provides that, notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State.

7.1.1. Responsibility for consultation with the DoS (or the National Security Council (NSC), as may be required by applicable law or regulation) before approval authority is granted to negotiate or conclude such an international agreement is vested in the USDP for all agreements for which approval authority has not been redelegated under section 13., below of this Directive and in the Head of each DoD Component, or designee, to whom approval authority has been redelegated under section 13., below, of this Directive, for all agreements covered by the applicable redelegation.

7.1.2. Questions concerning the requirement to effect such coordination shall be referred to the GC, DoD.

7.2. A DoD Component that enters into an international agreement (other than intelligence agreements) shall transmit the text of the agreement directly to the Assistant Legal Adviser for Treaty Affairs, DoS, and to the GC, DoD (Washington, DC, 20301-1600), not later than 20 days after the agreement enters into force. If the transmitted text is a copy of the original, the copy shall be certified to be a true copy of the original. If the text of the agreement is transmitted more than 20 days after its entry into force, the transmittal document shall fully and completely describe the reasons for the late submission. A background statement meeting the requirements of enclosure 3, and in the format of enclosure 6, shall accompany the transmitted text.

7.3. Except for the NSA, a DoD Component that enters into an international intelligence agreement, within 15 days after conclusion of the agreement, shall provide the DIA with one complete reproducible copy of the agreement along with a background statement meeting the requirements of enclosure 3 and in the format of enclosure 6. The DIA shall transmit the text of the agreement to the Assistant Legal Adviser for Treaty Affairs in accordance with paragraph 7.2., above. The NSA shall transmit the text of each international intelligence agreement to the Assistant Legal Adviser for Treaty Affairs in accordance with paragraph 7.2., above.

7.4. The Secretary of State determines for and within the Executive Branch whether an international agreement, as defined in this Directive, is required by the Case Act to be transmitted to the Congress under the criteria set forth in enclosure 3. If decided affirmatively, the Department of State makes the transmittals required. When a question arises as to whether any document or set of documents constitutes an international agreement within the meaning of the Case Act, that question shall be referred for decision through and by the GC, DoD to the Assistant Legal Adviser for Treaty Affairs, DoS, within 20 days after the agreement enters into force.

8. REQUIREMENTS FOR, AND RESTRICTIONS ON, AUTHORITY TO NEGOTIATE OR CONCLUDE AN INTERNATIONAL AGREEMENT OR TO MAKE UNILATERAL COMMITMENTS TO A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION

8.1. This Directive is procedural only. It does not constitute substantive legal authority to negotiate or conclude any international agreement. Substantive legal authority for obligations proposed to be assumed by the United States in an agreement may be found only in the law applicable to the subject matter involved in the agreement.

8.2. DoD personnel shall neither initiate nor conduct the negotiation of an international agreement, nor request another U.S. Government organization to negotiate an international agreement, without prior written approval by the DoD officer who is assigned approval responsibility under section 13., below, of this Directive, or by the designee or delegate of that officer.

8.2.1. Accreditation of DoD personnel to U.S. delegations to international conferences shall be made as stated in enclosure 5.

8.2.2. If a representative of a foreign government or international organization seeks to initiate the negotiation of an international agreement for which negotiation authority has not been granted under this Directive, the DoD officer or employee to whom such proposal is made, if someone other than an official who is authorized under this Directive to grant approval to negotiate, promptly shall report that fact, through appropriate channels, to the Head of the DoD Component concerned and await authorization before taking part in negotiations.

8.2.3. DoD personnel authorized to conduct or take part in the negotiation of an international agreement shall be responsible for ensuring that during the negotiation:

8.2.3.1. No position is communicated to a foreign government or to an international organization as a U.S. Government position that deviates from existing authorization or instructions; and

8.2.3.2. No proposal is agreed to beyond the existing authorization without clearance from the original approving office.

8.2.4. GC, DoD shall act as lead counsel for the Department in all international negotiations conducted by OSD components. This responsibility may be delegated to a DoD Component's Office of General Counsel or Staff Judge Advocate on a case-by-case basis.

8.2.5. The authority to negotiate and conclude proposed substantive amendments to an international agreement must be approved according to the procedures outlined in section 9., below. Substantive amendments include those provisions which, by themselves, might form the basis of a separate agreement or that propose a new or altered obligation not previously contemplated by the parties. The negotiation and conclusion of all amendments, whether substantive or not, must be approved by the same DoD official who approved the original agreement unless such official expressly has delegated authority to approve amendments to the agreement to another DoD official.

8.3. DoD personnel shall not conclude an international agreement without the prior written approval of the DoD official who is assigned approval responsibility by section 13., below, of this Directive, or by the designee or delegate of that official.

8.4. Notwithstanding delegations of authority made in section 13., below, of this Directive, all proposed international agreements having policy significance shall be approved by the OUSD(P) before any negotiation thereof, and again before they are concluded.

8.4.1. Agreements "having policy significance" include those agreements that:

8.4.1.1. Specify national disclosure, technology-sharing or work-sharing arrangements, coproduction of military equipment or offset commitments as part of an agreement for international cooperation in the research, development, test, evaluation, or production of defense articles, services, or technology.

8.4.1.2. Because of their intrinsic importance or sensitivity, would directly and significantly affect foreign or defense relations between the United States and another government.

8.4.1.3. By their nature, would require approval, negotiation or signature at the OSD or the diplomatic level.

8.4.1.4. Would create security commitments currently not assumed by the United States in existing mutual security or other defense agreements and arrangements, or that would increase U.S. obligations with respect to the defense of a foreign government or area.

8.4.2. This list in subparagraphs 8.4.1.1. through 8.4.1.4., above, is not inclusive of all types of agreements having policy significance. Other identifying criteria or categories of such agreements may be published by the USD(P) if required by future developments.

8.5. Notwithstanding the delegations of authority contained in section 13., below; of this Directive, no international agreement that relies on the authority of 10 U.S.C. 2304(c)(4) (reference (f)) for use of other than competitive contracting procedures, shall be negotiated or entered into without the prior approval of the USD(A).

8.6. Notwithstanding the delegations of authority contained in section 13., below, of this Directive, no international agreement shall be negotiated or entered into without the concurrence of the Assistant Secretary of Defense (Comptroller) (ASD(C)).

8.7. Notwithstanding the delegations of authority contained in section 13., below, of this Directive, no international agreement whose implementation requires the enactment of new legislative authority shall be concluded without the prior approval of the GC, DoD.

8.8. The authority to conclude an international agreement may be requested and granted simultaneously with the authority to negotiate that agreement, or authority to conclude may be withheld initially and granted later. The grant of either authority may be made subject to such conditions considered necessary or desirable by the officer exercising approval authority, including prescribing which DoD personnel shall participate in the negotiation and designating the chief negotiator.

8.9. Implementing agreements, annexes, project arrangements, and other subsidiary arrangements that implement an umbrella or other master agreement shall be reviewed by the GC, DoD, unless the responsible DoD Component has been delegated in writing the authority to negotiate and conclude such implementing arrangement. In these latter cases, legal review by the responsible DoD Component shall include a determination whether the proposed subsidiary arrangement is within the scope of the umbrella or master agreement.

8.10. With the exception of subparagraph 8.2.3.1., above, the restrictions and requirements of this section do not apply to DoD personnel and employees assigned or detailed to U.S. delegations or diplomatic missions, whether as individuals or as members of a military mission, group, or other organization, in those situations where the chief of the U.S. delegation or diplomatic mission directly requests authorization to negotiate from the Secretary of State under State Department Circular 175 Procedure (reference (g)). In such situations, DoD personnel shall comply fully with applicable instructions, including directives of the chief of mission.

8.11. No international agreement shall be concluded by any DoD personnel in a foreign language text, unless one of the following criteria is met:

8.11.1. The agreement expressly provides that the English language text shall be considered by the parties as the governing text in case of conflict between the different language texts.

8.11.2. The agreement expressly provides that the English language text and the foreign language text are equally authentic, and each foreign language text of the agreement is made the subject of a certification, executed before the agreement is concluded in any language, stating that the foreign language text and the English language text are in conformity with each other and that both texts have the same meaning in all substantive respects. The certification shall be dated and signed by a civilian, military, or local national translator who has been designated as qualified, consistent with local practices, by the DoD official authorized to negotiate and conclude the agreement or by an appropriate DoS official. The certification shall be sent with the agreement to the cognizant central repository identified in section 5., above, and, in accordance with the procedures in section 7., above, to the DoS.

8.12. All international agreements concluded by DoD personnel shall include the date and place of signature(s) and the typed name and title of each signatory. All amendments to international agreements concluded by DoD personnel shall include, in addition to the above information, the title and date of conclusion of the agreement that is being amended.

8.13. The USD(P) and all other officials of DoD Components to whom the responsibility to negotiate or conclude international agreements has been delegated shall obtain the concurrence of their DoD Component's Office of General Counsel or Staff Judge Advocate before tendering any draft of such agreement to a prospective party thereto and before initialing or concluding any international agreement. That concurrence shall include a certification that the requirements of the Case Act and this

Directive, including the review of agreements having policy significance as specified in paragraph 8.4., above, have been met.

8.14. The DoD Components shall not make any unilateral commitments to any foreign governments or international organizations, whether in the form of letters, memoranda, or statements at meetings or conferences, before obtaining the concurrence of their DoD Component's Office of General Counsel or Staff Judge Advocate.

9. STANDARD PROCEDURES FOR REQUESTING AUTHORITY TO NEGOTIATE OR CONCLUDE AN INTERNATIONAL AGREEMENT

9.1. The standard procedures in this section shall be used by the USD(P) and by all officials of the OSD to whom responsibility for granting or denying requests for authority to negotiate or conclude international agreements has been delegated by the USD(P), when considering a request for authority to negotiate or conclude an international agreement. The Heads of other DoD Components to whom such responsibility has been delegated are authorized to prescribe the use of summary procedures in lieu of these procedures for those categories of international agreements that do not have policy significance and for which they have responsibility for granting or denying requests for such authority to negotiate or conclude.

9.2. A request to the USD(P), or the delegee of that official within the OSD, for authority to negotiate an international agreement shall be made by the Head of the DoD Component that has the primary interest in negotiating and concluding the agreement. The request may include:

9.2.1. A request for the designation of a chief negotiator, who also may be empowered to conclude the agreement.

9.2.2. A request for assistance in the negotiation from other elements of the Department of Defense.

9.2.3. A request that the agreement be negotiated and concluded by the OSD or by a U.S. Government Department or Agency other than the Department of Defense.

9.3. The following shall be attached to the request:

9.3.1. A draft text or outline of the proposed international agreement or an explanation for the unavailability thereof.

9.3.2. A legal memorandum reciting the Constitutional, statutory, or other legal authority available to carry out each obligation proposed to be assumed by the United States in the agreement, and an explanation of other relevant legal considerations.

9.3.3. A fiscal memorandum that specifies the estimated cost of each obligation proposed to be assumed by the Department of Defense in the agreement, and the source of funds to be obligated, or a statement that additional funds for the purpose shall be requested for a specified fiscal year or years.

9.3.4. *A Technology Assessment/Control Plan in the format described in enclosure 7, which:*

9.3.4.1. Itemizes all sensitive U.S. classified and unclassified articles, commodities or technical data (see DoD Directive 5230.25 (reference (*h*))) that would be transferred via the proposed international agreement (which for classified articles, commodities, or technical data should be satisfied by submission of DD-254 or classification guide).

9.3.4.2. Assesses the risk to U.S. national security through such transfers.

9.3.4.3. Identifies the foreign technologies or other benefits that the United States is likely to acquire as a result of the proposed agreement.

9.4. The request shall be supplemented by any other data that the USD(P), or as the case may be, the official to whom appropriate authority has been delegated, considers necessary to reach a decision.

9.5. The official in the OSD exercising the authority to approve requests for authority to negotiate or to conclude an international agreement shall obtain concurrence from the GC, DoD, and, except with respect to Security Assistance, the ASD(C), before granting any such request.

9.6. Subparagraphs 9.3.2. through 9.3.4. above, and paragraph 9.5., above, of this section do not apply to standard form project annexes that are negotiated under the authority of any master agreement prescribing the format of project annexes, provided that the requirements of paragraph 8.13., above, have been complied with.

10. CENTRAL OFFICES OF RECORD

10.1. The USD(P) shall designate a single office of record for the OSD that shall:

10.1.1. Receive requests submitted under section 9., above.

10.1.2. Record actions taken including coordination with the Department of State and the staff of the NSC.

10.1.3. Receive and record proposals submitted for redelegations of authority under section 12., below, of this Directive.

10.1.4. Ensure that a complete negotiating history file is compiled, retained, and maintained in retrievable form within the office of record for each international agreement for which that office bears primary negotiating responsibility within the Department of Defense; this requirement shall apply even if the chief U.S. negotiator or the signer of the agreement is an official of another DoD organization.

10.1.5. Forward two reproducible copies of each agreement to the GC, DoD (Washington, DC, 20301-1600), in accordance with paragraph 5.1., above.

10.2. Each DoD Component other than the OSD that negotiates international agreements shall promulgate Regulations to implement this Directive, and, in its Regulations, designate a single office of record that shall:

10.2.1. Receive requests originating within that DoD Component for authorization under section 9., above, to negotiate or conclude an international agreement.

10.2.2. Record coordination actions taken on a request originating from another DoD Component.

10.2.3. Record authorizations to negotiate or conclude an international agreement granted to a DoD Component by the USD(P) or by an official to whom approval authority is redelegated under section 13., below (and denials of such authorizations).

10.2.4. Ensure that a complete negotiating history file is compiled, retained, and maintained in retrievable form within the DoD Component for each international agreement for which the DoD Component bears primary negotiating responsibility within the Department of Defense; this requirement shall apply, even if the chief U.S. negotiator or the signer of the agreement is an official of another, DoD organization.

10.2.5. Monitor compliance, within that organizational element, with the provisions of this Directive.

10.2.6. Maintain an index of all such agreements. A copy of the index, updated to include all agreements of the previous calendar year, shall be sent to the GC, DoD, by January 31 of each year.

10.2.7. Forward two reproducible copies of each international agreement to the GC, DoD (Washington, DC, 20301-1600), in accordance with paragraph 5.1., above.

10.3. The Under Secretary of Defense (Acquisition) (USD(A)), the Assistant Secretaries of Defense (ASDs), and the Assistant to the Secretary of Defense (Atomic Energy) (ATSD(AE)) shall designate an office of record within their organizations to discharge the functions specified in subparagraphs 10.2.1. through 10.2.7., above.

11. COMPLIANCE

It is DoD policy to maintain awareness of compliance with the terms of international agreements. The DoD Components shall oversee compliance with international agreements for those agreements for which the DoD Component is responsible. The DoD Components shall keep the GC, DoD, currently and completely informed on compliance with all international agreements in force for which they are responsible. When a question arises concerning compliance by any party or parties with the terms of an international agreement that cannot be resolved by informal discussions between the responsible offices, except for those cases governed by the procedures set forth in DoD Directive 5525.1 (reference (*i*)), the Head of the DoD Component concerned shall be provided with full particulars of the circumstances relevant to such question. Unless previously authorized by the Secretary of Defense, no action shall be taken by any DoD Component to resolve or otherwise deal with any such questions having policy significance (see paragraph 8.4., above) before obtaining the written concurrence of both the USD(P) and the GC, DoD.

12. ASSIGNMENT OF RESPONSIBILITY FOR AUTHORIZING NEGOTIATION AND CONCLUSION OF INTERNATIONAL AGREEMENTS

12.1. The responsibility for authorizing the negotiation and conclusion of international agreements is assigned to the USD(P) for all categories of international agreements, unless this Directive or other authorizing regulation for a specific category of agreements specifies another official within the Department of Defense.

12.2. The USD(P) may delegate authority to the Heads of the DoD Components to approve negotiation and conclusion of categories of international agreements, with

authority to redelegate, and may rescind or change any delegations made by them. Section 13., below, of this Directive contains such delegations of authority. All further delegations shall be in writing and a copy of such delegation filed with the GC, DoD.

12.3. To the maximum extent possible, and while considering security implications, delegations of authority by the USD(P) shall be granted for classes or types of agreements, rather than on a case-by-case basis. Requests for authority to negotiate and conclude agreements having policy significance shall be forwarded directly to the USD(P) in accordance with paragraph 8.4. and section 9., above, of this Directive. In case of doubt, the decision as to whether or not a proposed agreement falls under paragraph 8.4., above, shall be made by the USD(P).

12.4. With respect to such agreements, the USD(P) shall:

12.4.1. Arrange for DoD participation in the negotiations, including representation, advice, or assistance by other DoD Components, when appropriate.

12.4.2. Monitor the implementation of agreements in force, and provide appropriate guidance, advice, and assistance to other DoD Components in the exercise of their responsibilities under such agreements.

12.5. If the proposed agreement is to be negotiated and signed at the diplomatic level, requests forwarded to the USD(P) pursuant to section 9., above, shall be accompanied by draft negotiating instructions to be transmitted by the DoS to the U.S. diplomatic mission concerned.

12.6. The approval authority delegated in section 13., below, may be redelegated. However, the DoD Component to which approval authority is initially delegated by section 13., below, is responsible for complying with this Directive.

13. DELEGATIONS OF AUTHORITY

Authority to negotiate and conclude international agreements is hereby delegated, within the categories shown, to the following designated organizational elements of the Department of Defense:

13.1. Technical, operational, working, or similar agreements or arrangements, concluded pursuant to a treaty or executive agreement that entails implementing arrangements:

13.1.1. The Secretaries of the Army, the Navy, and the Air Force (for predominantly uni-Service matters).

13.1.2. The Chairman, Joint Chiefs of Staff (for agreements concerning operational command of joint forces).

13.1.3. The Director, Defense Security Assistance Agency (DSAA), (for agreements pertaining to the security assistance program).

13.2. Agreements for cooperative or reciprocal operational, logistical, training, or other military support, including arrangements for shared use or licensing of military equipment, facilities, services and nonphysical resources.

13.2.1. The Secretaries of the Army, the Navy, and the Air Force (for predominantly uni-Service matters).

13.2.2. The Chairman of the Joint Chiefs of Staff (for agreements concerning operational command of joint forces).

13.2.3. The USD(A) (for agreements concerning cooperative or reciprocal logistical support, including shared use of equipment, facilities, and services, except for uni-Service matters).

13.2.4. The Director, DSAA (for agreements pertaining to the security assistance program).

13.3. Agreements relating to combined military planning, command relationships, military exercises and operations, minor and emergency force deployments, and exchange programs, including those effected pursuant to 10 U.S.C. 2114(a) (reference (f)):

13.3.1. The Secretaries of the Army, the Navy, and the Air Force (for predominantly uni-Service matters).

13.3.2. The Chairman of the Joint Chiefs of Staff (for other than uni-Service matters).

13.4. Agreements for the collection and exchange of military intelligence information (except signals intelligence agreements): The Director, DIA. The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I)) shall concur in all proposed agreements concerning intelligence and intelligence-related matters.

13.5. Agreements for the collection or exchange of military information and data other than military intelligence:

13.5.1. The Secretaries of the Army, the Navy, and the Air Force (for predominantly uni-Service matters);

13.5.2. The Chairman of the Joint Chiefs of Staff (for agreements concerning operational command of joint forces).

13.5.3. The Director, DMA, with the ASD(C3I) concurrence (for agreements relating to mapping, charting, and geodesy).

13.6. Cooperative research, development, test, evaluation, technical data exchange, and related standardization agreements that are not implemented through the Security Assistance program:

13.6.1. The Secretaries of the Army, the Navy, and the Air Force (for health and medical agreements)

13.6.2. The USD(A).

13.7. Coproduction, licensed production, and related standardization agreements that are not implemented through the Security Assistance Program: The USD(A).

13.8. Agreements relating to the sharing or exchange of DoD communications equipment, facilities, support, services, or other communications resources with a foreign country or alliance organization such as the North Atlantic Treaty Organization (NATO) (including agreements pursuant to 10 U.S.C. 2401a) (reference (f)), the use of U.S. military frequencies or frequency bands, and the use of U.S. communications facilities and/or systems by foreign organizations, whether overseas or in the CONUS:

13.8.1. The ASD(C3I).

13.8.2. The Chairman of the Joint Chiefs of Staff (for agreements concerning operational command of joint forces).

13.8.3. The Secretaries of the Army, the Navy, and the Air Force (for predominantly uni-Service matters).

13.9. Military and industrial security agreements under the provisions of subparagraph 5.1.4. of DoD Directive 5230.11 (reference (j)): The DUSD(P).

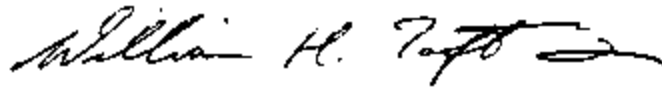
13.10. Agreements relating to on-base financial institutions (e.g. military banking facilities and credit unions) and international financial agreements requiring Treasury Department coordination under DoD Instruction 7360.9 (reference (k)): The ASD(C).

13.11. Agreements relating to communications security technology, services, support, research, or equipment development and production: The Director, NSA.

13.12. Military-related signals intelligence agreements: The Director, NSA. The ASD(C3I) shall concur in all proposed agreements.

14. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel, Department of Defense, and to the Under Secretary of Defense for Policy within 120 days.



William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 7

- E1. References, continued
- E2. Definitions
- E3. Title 22, Code of Federal Regulations, Part 181
- E4. Section 112b of title 1, United States Code
- E5. Multiaddressee Memorandum of former DoD Secretary Melvin R. Laird, subject: "Attendance by DoD Personnel at International Conferences, Organizations, Meetings, and Negotiations," January 3, 1972
- E6. Sample Format of Background Statement for Submission of International Agreements to the DoD Assistant General Counsel (International Affairs) and to the Department of State
- E7. *Technology Assessment/Control Plan (TA/CP) International Agreements*

E1. ENCLOSURE 1

REFERENCES, continued

- (d) [DoD Directive 2010.6](#), "Standardization and Interoperability of Weapons Systems and Equipment Within the North Atlantic Treaty Organization," March 5, 1980
- (e) [DoD Directive 5105.38](#), "Defense Security Assistance Agency (DSAA)," August 10, 1978
- (f) Sections 2114(a) and 2114(e), 2304(c) (4), 2321 et seq., 2401a, 2667, and 2675 of title 10, United States Code
- (g) State Department Circular 175 Procedure, Foreign Affairs Manual, Volume 11, Chapter 700
- (h) [DoD Directive 5230.25](#), "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984
- (i) [DoD Directive 5525.1](#), "Status of Forces Policies and Information," August 7, 1979
- (j) [DoD Directive 5230.11](#), "Disclosure of Classified Military Information to Foreign Governments and International Organizations," December 31, 1984
- (k) DoD Instruction 7360.9, "Procedures for Use of Foreign Currencies, September 8, 1981
- (l) Section 2796 of title 22, United States Code
- (m) [DoD Directive 2010.9](#), "Mutual Logistics Support Between the United States and Governments of Other NATO Countries and NATO Subsidiary Bodies," June 7, 1984

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. International Agreement

E2.1.1.1. Any agreement concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization, that:

E2.1.1.1.1. Is signed or agreed to by personnel of any DoD Component, or by representatives of the DoS or any other Department or Agency of the U.S. Government;

E2.1.1.1.2. Signifies the intention of its parties to be bound in international law.

E2.1.1.1.3. Is denominated as an international agreement or as a memorandum of understanding, memorandum of agreement, memorandum of arrangements, exchange of notes, exchange of letters, technical arrangement, protocol, note verbal, aide memoire, agreed minute, contract, arrangement, statement of intent, letter of intent, statement of understanding or any other name connoting a similar legal consequence.

E2.1.1.2. Any oral agreement that meets the criteria of paragraph E2.1.1., above, is an international agreement. The DoD representative who enters into the agreement shall cause such agreement to be reduced to writing. In written form, the agreement is subject to the requirements of sections 5. and 7., above.

E2.1.1.3. The following are not considered to constitute international agreements for the purposes of this Directive:

E2.1.1.3.1. Contracts made under the Federal Acquisition Regulations (FAR).

E2.1.1.3.2. Foreign Military Sales Credit Agreements.

E2.1.1.3.3. Foreign Military Sales Letters of Offer and Acceptance and Letters of Intent executed on DD Form 1513, "DoD Letter of Offer and Acceptance" and DD Form 2012, "U.S. Department of Defense Letter of Intent."

E2.1.1.3.4. Standardization Agreements (STANAGs, QSTAGs, ASCC Air Standards, and NAVSTAGs) that record the adoption of like or similar military equipment, ammunition, supplies, and stores or operational, logistic, and administrative procedures (however, a STANAG that provides for mutual support or cross-servicing of military equipment, ammunition, supplies, and stores or for mutual rendering of defense services, including training, is considered to constitute an international agreement).

E2.1.1.3.5. Leases under 10 U.S.C. 2667, 2675 (reference (f)), and 22 U.S.C. 2796 (reference (I)).

E2.1.1.3.6. Agreements solely to establish administrative procedures.

E2.1.1.3.7. Acquisitions or orders pursuant to cross-servicing agreements made under the authority of the NATO Mutual Support Act (10 U.S.C. 2321 et seq. (reference (f)) and DoD Directive 2010.9 (reference (m))). (Umbrella agreements, implementing arrangements, and cross-servicing agreements under the NATO Mutual Support Act are international agreements.)

E2.1.2. Negotiation. Communication by any means of a position or an offer, on behalf of the United States, the Department of Defense, or on behalf of any officer or organizational element thereof, to an agent or representative of a foreign government, including an agency, instrumentality, or political subdivision thereof, or of an international organization, in such detail that the acceptance in substance of such position or offer would result in an international agreement. The term "negotiation" includes any such communication even though conditioned on later approval by the responsible authority. The term "negotiation" also includes provision of a draft agreement or other document, the acceptance of which would constitute an agreement, as well as discussions concerning any U.S. or foreign government or international organization draft document whether or not titled "agreement." The term "negotiation" does not include preliminary or exploratory discussions or routine meetings where no draft documents are discussed, so long as such discussions or meetings are conducted with the understanding that the views communicated do not and shall not bind or commit any side, legally or otherwise.

E2.1.3. Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement by the United States.

E3. ENCLOSURE 3

TITLE 22, CODE OF FEDERAL REGULATIONS, PART 181

§ 181.1

22 CFR Ch. I (4-1-85 Edition)

SUBCHAPTER S—INTERNATIONAL AGREEMENTS

PART 181—COORDINATION AND REPORTING OF INTERNATIONAL AGREEMENTS

Sec.

181.1 Purpose and application.

181.2 Criteria.

181.3 Determinations.

181.4 Consultations with the Secretary of State.

181.5 Twenty-day rule for concluded agreements.

181.6 Documentation and certification.

181.7 Transmittal to the Congress.

AUTHORITY: 1 U.S.C. 112b; 22 U.S.C. 2652; 22 U.S.C. 3812.

SOURCE: Dept. Reg. 108,509, 46 FR 35918, July 13, 1981, unless otherwise noted.

§ 181.1 Purpose and application.

(a) The purpose of this part is to implement the provisions of 1 U.S.C. 112b, popularly known as the Case-Zablocki Act (hereinafter referred to as the "Act"), on the reporting to Congress and coordination with the Secretary of State of international agreements of the United States. This part applies to all agencies of the U.S. Government whose responsibilities include the negotiation and conclusion of international agreements. This part does not, however, constitute a delegation by the Secretary of State of the authority to engage in such activities. Further, it does not affect any additional requirements of law governing the relationship between particular agencies and the Secretary of State in connection with international negotiations and agreements, or any other requirements of law concerning the relationship between particular agencies and the Congress. The term "agency" as used in this part means each authority of the United States Government, whether or not it is within or subject to review by another agency.

(b) Pursuant to the key legal requirements of the Act—full and timely disclosure to the Congress of all concluded agreements and consultation by agencies with the Secretary of State with respect to proposed agreements—every agency of the Government is required to comply with each of the provisions set out in this part in

implementation of the Act. Nevertheless, this part is intended as a framework of measures and procedures which, it is recognized, cannot anticipate all circumstances or situations that may arise. Deviation or derogation from the provisions of this part will not affect the legal validity, under United States law or under international law, of agreements concluded, will not give rise to a cause of action, and will not affect any public or private rights established by such agreements.

§ 181.2 Criteria.

(a) *General.* The following criteria are to be applied in deciding whether any undertaking, oral agreement, document, or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Act, as well as within the meaning of 1 U.S.C. 112a, requiring the publication of international agreements. Each of the criteria except those in paragraph (a)(3) of this section must be met in order for any given undertaking of the United States to constitute an international agreement.

(1) *Identity and intention of the parties.* A party to an international agreement must be a state, a state agency, or an intergovernmental organization. The parties must intend their undertaking to be legally binding, and not merely of political or personal effect. Documents intended to have political or moral weight, but not intended to be legally binding, are not international agreements. An example of the latter is the Final Act of the Helsinki Conference on Cooperation and Security in Europe. In addition, the parties must intend their undertaking to be governed by international law, although this intent need not be manifested by a third-party dispute settlement mechanism or any express reference to international law. In the absence of any provision in the arrangement with respect to governing law, it will be presumed to be governed by international law. This presumption may be overcome by clear evidence, in

Department of State

§ 181.2

the negotiating history of the agreement or otherwise, that the parties intended the arrangement to be governed by another legal system. Arrangements governed solely by the law of the United States, or one of the states or jurisdictions thereof, or by the law of any foreign state, are not international agreements for these purposes. For example, a foreign military sales loan agreement governed in its entirety by U.S. law is not an international agreement.

(2) *Significance of the arrangement.* Minor or trivial undertakings, even if couched in legal language and form, are not considered international agreements within the meaning of the Act or of 1 U.S.C. 112a. In deciding what level of significance must be reached before a particular arrangement becomes an international agreement, the entire context of the transaction and the expectations and intent of the parties must be taken into account. It is often a matter of degree. For example, a promise to sell one map to a foreign nation is not an international agreement; a promise to exchange all maps of a particular region to be produced over a period of years may be an international agreement. It remains a matter of judgment based on all of the circumstances of the transaction. Determinations are made pursuant to § 181.3. Examples of arrangements that may constitute international agreements are agreements that: (i) Are of political significance; (ii) involve substantial grants of funds or loans by the United States or credits payable to the United States; (iii) constitute a substantial commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations; (iv) involve continuing and/or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment, or the pooling of data. However, individual research grants and contracts do not ordinarily constitute international agreements.

(3) *Specificity, including objective criteria for determining enforceability.* International agreements require precision and specificity in the language

setting forth the undertakings of the parties. Undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements. Most frequently such terms reflect an intent not to be bound. For example, a promise to "help develop a more viable world economic system" lacks the specificity essential to constitute a legally binding international agreement. However, the intent of the parties is the key factor. Undertakings as general as those of, for example, Articles 55 and 56 of the United Nations Charter have been held to create internationally binding obligations intended as such by the parties.

(4) *Necessity for two or more parties.* While unilateral commitments on occasion may be legally binding, they do not constitute international agreements. For example, a statement by the President promising to send money to Country Y to assist earthquake victims would not be an international agreement. It might be an important undertaking, but not all undertakings in international relations are in the form of international agreements. Care should be taken to examine whether a particular undertaking is truly unilateral in nature, or is part of a larger bilateral or multilateral set of undertakings. Moreover, "consideration," as that term is used in domestic contract law, is not required for international agreements.

(5) *Form.* Form as such is not normally an important factor, but it does deserve consideration. Documents which do not follow the customary form for international agreements, as to matters such as style, final clauses, signatures, or entry into force dates, may or may not be international agreements. Failure to use the customary form may constitute evidence of a lack of intent to be legally bound by the arrangement. If, however, the general content and context reveal an intention to enter into a legally binding relationship, a departure from customary form will not preclude the arrangement from being an international agreement. Moreover, the title of the agreement will not be determinative. Decisions will be made on the

§ 181.3

22 CFR Ch. I (4-1-85 Edition)

basis of the substance of the arrangement, rather than on its denomination as an international agreement, a memorandum of understanding, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide-memoire, agreed minute, or any other name.

(b) *Agency-Level agreements.* Agency-level agreements are international agreements within the meaning of the Act and of 1 U.S.C. 112a if they satisfy the criteria discussed in paragraph (a) of this section. The fact that an agreement is concluded by and on behalf of a particular agency of the United States Government, rather than the United States Government, does not mean that the agreement is not an international agreement. Determinations are made on the basis of the substance of the agency-level agreement in question.

(c) *Implementing agreements.* An implementing agreement, if it satisfies the criteria discussed in paragraph (a) of this section, may be an international agreement, depending upon how precisely it is anticipated and identified in the underlying agreement it is designed to implement. If the terms of the implementing agreement are closely anticipated and identified in the underlying agreement, only the underlying agreement is considered an international agreement. For example, the underlying agreement might call for the sale by the United States of 1000 tractors, and a subsequent implementing agreement might require a first installment on this obligation by the sale of 100 tractors of the brand X variety. In that case, the implementing agreement is sufficiently identified in the underlying agreement, and would not itself be considered an international agreement within the meaning of the Act or of 1 U.S.C. 112a. Project annexes and other documents which provide technical content for an umbrella agreement are not normally treated as international agreements. However, if the underlying agreement is general in nature, and the implementing agreement meets the specified criteria of paragraph (a) of this section, the implementing agreement might well be an international agreement. For example, if the underlying agreement calls

for the conclusion of "agreements for agricultural assistance," but without further specificity, then a particular agricultural assistance agreement subsequently concluded in "implementation" of that obligation, provided it meets the criteria discussed in paragraph (a) of this section, would constitute an international agreement independent of the underlying agreement.

(d) *Extensions and modifications of agreements.* If an undertaking constitutes an international agreement within the meaning of the Act and of 1 U.S.C. 112a, then a subsequent extension or modification of such an agreement would itself constitute an international agreement within the meaning of the Act and of 1 U.S.C. 112a.

(e) *Oral agreements.* Any oral arrangement that meets the criteria discussed in paragraphs (a)(1)-(4) of this section is an international agreement and, pursuant to section (a) of the Act, must be reduced to writing by the agency that concluded the oral arrangement. In such written form, the arrangement is subject to all the requirements of the Act and of this part. Whenever a question arises whether an oral arrangement constitutes an international agreement, the arrangement shall be reduced to writing and the decision made in accordance with § 181.3.

§ 181.3 Determinations.

(a) Whether any undertaking, document, or set of documents constitutes or would constitute an international agreement within the meaning of the Act or of 1 U.S.C. 112a shall be determined by the Legal Adviser of the Department of State, a Deputy Legal Adviser, or in most cases the Assistant Legal Adviser for Treaty Affairs. Such determinations shall be made either on a case-by-case basis, or on periodic consultation, as appropriate.

(b) Agencies whose responsibilities include the negotiation and conclusion of international agreements are responsible for transmitting to the Assistant Legal Adviser for Treaty Affairs, for decision pursuant to paragraph (a) of this section, the texts of any document or set of documents

Department of State

§ 181.4

that might constitute an international agreement. The transmittal shall be made prior to or simultaneously with the request for consultations with the Secretary of State required by subsection (c) of the Act and § 181.4 of this part.

(c) Agencies whose responsibilities include the negotiation and conclusion of large numbers of agency-level and implementing arrangements at overseas posts, only a small number of which might constitute international agreements within the meaning of the Act and of 1 U.S.C. 112a, are required to transmit prior to their entry into force only the texts of the more important of such arrangements for decision pursuant to paragraph (a) of this section. The texts of all arrangements that might constitute international agreements shall, however, be transmitted to the Office of the Assistant Legal Adviser for Treaty Affairs as soon as possible, and in no event to arrive at that office later than 20 days after their signing, for decision pursuant to paragraph (a) of this section.

(d) Agencies to which paragraphs (b) and (c) of this section apply shall consult periodically with the Assistant Legal Adviser for Treaty Affairs in order to determine which categories of arrangements for which they are responsible are likely to be international agreements within the meaning of the Act and of 1 U.S.C. 112a.

§ 181.4 Consultations with the Secretary of State.

(a) The Secretary of State is responsible, on behalf of the President, for ensuring that all proposed international agreements of the United States are fully consistent with United States foreign policy objectives. Except as provided in § 181.3(c) of this part, no agency of the U.S. Government may conclude an international agreement, whether entered into in the name of the U.S. Government or in the name of the agency, without prior consultation with the Secretary of State or his designee.

(b) The Secretary of State (or his designee) gives his approval for any proposed agreement negotiated pursuant to his authorization, and his opinion on any proposed agreement negoti-

ated by an agency which has separate authority to negotiate such agreement. The approval or opinion of the Secretary of State or his designee with respect to any proposed international agreement will be given pursuant to Department of State procedures set out in Volume II, *Foreign Affairs Manual*, Chapter 700 (Circular 175 procedure). Officers of the Department of State shall be responsible for the preparation of all documents required by the Circular 175 procedure.

(c) Pursuant to the Circular 175 procedure, the approval of, or an opinion on a proposed international agreement to be concluded in the name of the U.S. Government will be given either by the Secretary of State or his designee. The approval of, or opinion on a proposed international agreement to be concluded in the name of a particular agency of the U.S. Government will be given by the interested assistant secretary or secretaries of State, or their designees, unless such official(s) judge that consultation with the Secretary, Deputy Secretary, or an Under Secretary is necessary. The approval of, or opinion on a proposed international agreement will normally be given within 20 days of receipt of the request for consultation and of the information as required by § 181.4(d)-(g).

(d) Any agency wishing to conclude an international agreement shall transmit to the interested bureau or office in the Department of State, or to the Office of the Legal Adviser, for consultation pursuant to this section, a draft text or summary of the proposed agreement, a precise citation of the Constitutional, statutory, or treaty authority for such agreement, and other background information as requested by the Department of State. The transmittal of the draft text or summary and citation of legal authority shall be made before negotiations are undertaken, or if that is not feasible, as early as possible in the negotiating process. In any event such transmittals must be made no later than 50 days prior to the anticipated date for concluding the proposed agreement. If unusual circumstances prevent this 50-day requirement from being met, the concerned agency shall use its best ef-

§ 181.5

forts to effect such transmittal as early as possible prior to the anticipated date for concluding the proposed agreement.

(e) If a proposed agreement embodies a commitment to furnish funds, goods, or services that are beyond or in addition to those authorized in an approved budget, the agency proposing the agreement shall state what arrangements have been planned or carried out concerning consultation with the Office of Management and Budget for such commitment. The Department of State should receive confirmation that the relevant budget approved by the President provides or requests funds adequate to fulfill the proposed commitment, or that the President has made a determination to seek the required funds.

(f) Consultation may encompass a specific class of agreements rather than a particular agreement where a series of agreements of the same general type is contemplated; that is, where a number of agreements are to be negotiated according to a more or less standard formula, such as, for example, Pub. L. 480 Agricultural Commodities Agreements. Any agency wishing to conclude a particular agreement within a specific class of agreements about which consultations have previously been held pursuant to this section shall transmit a draft text of the proposed agreement to the Office of the Legal Adviser as early as possible but in no event later than 20 days prior to the anticipated date for concluding the agreement.

(g) The consultation requirement shall be deemed to be satisfied with respect to proposed international agreements of the United States about which the Secretary of State (or his designee) has been consulted in his capacity as a member of an interagency committee or council established for the purpose of approving such proposed agreements. Designees of the Secretary of State serving on any such interagency committee or council are to provide as soon as possible to the interested offices or bureaus of the Department of State and to the Office of the Legal Adviser copies of draft texts or summaries of such proposed agree-

22 CFR Ch. I (4-1-85 Edition)

ments and other background information as requested.

(h) Before an agreement containing a foreign language text may be signed or otherwise concluded, a signed memorandum must be obtained from a responsible language officer of the Department of State or of the U.S. Government agency concerned certifying that the foreign language text and the English language text are in conformity with each other and that both texts have the same meaning in all substantive respects. The signed memorandum is to be made available to the Department of State upon request.

§ 181.5 Twenty-day rule for concluded agreements.

(a) Any agency, including the Department of State, that concludes an international agreement within the meaning of the Act and of 1 U.S.C. 112a, whether entered into in the name of the U.S. Government or in the name of the agency, must transmit the text of the concluded agreement to the Office of the Assistant Legal Adviser for Treaty Affairs as soon as possible and in no event to arrive at that office later than 20 days after the agreement has been signed. The 20-day limit, which is required by the Act, is essential for purposes of permitting the Department of State to meet its obligation under the Act to transmit concluded agreements to the Congress no later than 60 days after their entry into force.

(b) In any case of transmittal after the 20-day limit, the agency or Department of State office concerned may be asked to provide to the Assistant Legal Adviser for Treaty Affairs a statement describing the reasons for the late transmittal. Any such statements will be used, as necessary, in the preparation of the annual report on late transmittals, to be signed by the President and transmitted to the Congress, as required by subsection (b) of the Act.

§ 181.6 Documentation and certification.

(a) Transmittals of concluded agreements to the Assistant Legal Adviser for Treaty Affairs pursuant to § 181.5 must include the signed or initialed

Department of State

§ 181.7

original texts, together with all accompanying papers, such as agreed minutes, exchanges of notes, or side letters. The texts transmitted must be accurate, legible, and complete, and must include the texts of all languages in which the agreement was signed or initiated. Names and identities of the individuals signing or initialing the agreements, for the foreign government as well as for the United States, must, unless clearly evident in the texts transmitted, be separately provided.

(b) Agreements from overseas posts should be transmitted to the Department of State by priority airmail, marked for the attention of the Assistant Legal Adviser for Treaty Affairs, with the following notation below the enclosure line: PALM: Please send attached original agreement to L/T on arrival.

(c) Where the original texts of concluded agreements are not available, certified copies must be transmitted in the same manner as original texts. A certified copy must be an exact copy of the signed original.

(d) When an exchange of diplomatic notes between the United States and a foreign government constitutes an agreement or has the effect of extending, modifying, or terminating an agreement to which the United States is a party, a properly certified copy of the note from the United States to the foreign government, and the signed original of the note from the foreign government, must be transmitted. If, in conjunction with the agreement signed, other notes related thereto are exchanged (either at the same time, beforehand, or subsequently), properly certified copies of the notes from the United States to the foreign government must be transmitted with the signed originals of the notes from the foreign government.

(e) Copies may be certified either by a certification on the document itself, or by a separate certification attached to the document. A certification on the document itself is placed at the end of the document. It indicates, either typed or stamped, that the document is a true copy of the original signed or initialed by (insert full name of signing officer), and it is signed by

the certifying officer. If a certification is typed on a separate sheet of paper, it briefly describes the document certified and states that it is a true copy of the original signed by (full name) and it is signed by the certifying officer.

§ 181.7 Transmittal to the Congress.

(a) International agreements other than treaties shall be transmitted by the Assistant Legal Adviser for Treaty Affairs to the President of the Senate and the Speaker of the House of Representatives as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter.

(b) Classified agreements shall be transmitted by the Assistant Secretary of State for Congressional Relations to the Senate Committee on Foreign Relations and to the House Committee on Foreign Affairs.

(c) The Assistant Legal Adviser for Treaty Affairs shall also transmit to the President of the Senate and to the Speaker of the House of Representatives background information to accompany each agreement reported under the Act. Background statements, while not expressly required by the act, have been requested by the Congress and have become an integral part of the reporting requirement. Each background statement shall include information explaining the agreement, the negotiations, the effect of the agreement, and a precise citation of legal authority. At the request of the Assistant Legal Adviser for Treaty Affairs, each background statement is to be prepared in time for transmittal with the agreement it accompanies by the office most closely concerned with the agreement. Background statements for classified agreements are to be transmitted by the Assistant Secretary of State for Congressional Relations to the Senate Committee on Foreign Relations and to the House Committee on Foreign Affairs.

(d) Pursuant to section 12 of the Taiwan Relations Act (22 U.S.C. 3311), any agreement entered into between the American Institute in Taiwan and the governing authorities of Taiwan, or any agreement entered into be-

§ 181.7

22 CFR Ch. I (4-1-85 Edition)

tween the Institute and an agency of the United States Government, shall be transmitted by the Assistant Secretary of State for Congressional Relations to the President of the Senate and to the Speaker of the House of Representatives as soon as practicable after the entry into force of such

agreements, but in no event later than 60 days thereafter. Classified agreements entered into by the Institute shall be transmitted by the Assistant Secretary for Congressional Relations to the Senate Committee on Foreign Affairs.

E4. ENCLOSURE 4

SECTION 112b OF TITLE 1, UNITED STATES CODE

"Sec. 112b. United States international agreements; transmissions to Congress

a. The Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreements which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President. Any department or agency of the United States Government which enters into any international agreement on behalf of the United States shall transmit to the Department of State the text of such agreement not later than twenty days after such agreement has been signed.

b. Not later than March 1, 1979, and at yearly intervals thereafter, the President shall, under his own signature, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report with respect to each international agreement which, during the preceding year, was transmitted to the Congress after the expiration of the 60-day period referred to in the first sentence of subsection (a), describing fully and completely the reasons for the late transmittal.

c. Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement.

d. The Secretary of State shall determine for and within the executive branch whether an arrangement constitutes an international agreement within the meaning of this section.

e. The President shall, through the Secretary of State, promulgate such rules and regulations as may be necessary to carry out this section.

(Added Pub. L. 92-403, Sec. 1, Aug. 22, 1972, 86 Stat. 619, and amended Pub. L. 95-45, Sec. 5, June 15, 1977, 91 Stat. 224, Pub. L. 95-426, Title VII, Sec. 708, Oct. 7, 1978, 92 Stat. 993.)"

E5. ENCLOSURE 5

MULTIADDRESSEE MEMORANDUM OF FORMER DoD SECRETARY MELVIN R. LAIRD, SUBJECT: "ATTENDANCE BY DoD PERSONNEL AT INTERNATIONAL CONFERENCES, ORGANIZATIONS, MEETINGS, AND NEGOTIATIONS," JANUARY 8, 1972

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

JAN 8 1972

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTOR OF OCEAN AFFAIRS

SUBJECT: Attendance by DOD Personnel at International Conferences,
Organizations, Meetings, and Negotiations

It has recently been brought to my attention that unaccredited DOD officials have, from time to time, appeared at international conferences to join the official US delegation.

In order to preclude a recurrence of such incidents, the Assistant Secretary of Defense (International Security Affairs) will be responsible for informing the Department of State, in all cases, of the names of those who will represent the Department of Defense in international organizations and at international conferences or negotiations.

Addressees of this memorandum are requested to provide appropriate information concerning attendees at meetings within areas in which they have an interest to the Assistant Secretary of Defense (International Security Affairs) in order that the Department of State may be informed. Except where circumstances make it impractical, the information should be submitted two weeks in advance of the prospective attendance.



E6. ENCLOSURE 6

SAMPLE FORMAT OF BACKGROUND STATEMENT FOR SUBMISSION
OF INTERNATIONAL AGREEMENTS TO THE DoD ASSISTANT
GENERAL COUNSEL (INTERNATIONAL AFFAIRS) AND TO THE
DEPARTMENT OF STATE

- I. TYPE of agreement:

bilateral _____ multilateral _____
- II. Specify the COUNTRY (COUNTRIES) or INTERNATIONAL ORGANIZATION(S) that is/are party (parties). Do not list the United States.
- III. List all U.S. and FOREIGN GOVERNMENTAL AGENCIES or UNITS or INTERNATIONAL ORGANIZATIONS identified as responsible for carrying out the agreement.
- IV. Specify the FULL TITLE of the agreement.
- V. Specify the SUBJECT MATTER of the agreement.
- VI. Provide a statement of the LEGAL AUTHORITY that authorizes the Department of Defense to enter into and carry out the agreement.
- VII. State the Date of ENTRY INTO FORCE.
- VIII. State the Date of TERMINATION
- IX. PRINT the NAMES of all SIGNING OFFICIALS, their TITLE and/or the OFFICES they represent, and their COUNTRIES or INTERNATIONAL ORGANIZATION.
- X. State the FULL TITLE(S) and DATE(S) of AGREEMENT(S), if any, upon which this agreement is based or amends.
- XI. State the DATE OF SIGNATURE of this agreement.

E7. ENCLOSURE 7**TECHNOLOGY ASSESSMENT/CONTROL PLAN (TA/CP)
INTERNATIONAL AGREEMENTS**

The TA/CP requirements set forth in paragraphs 1 through 4 below meet the technology assessment prerequisite for requests for authority to negotiate (RAN) an international agreement. In developing the TA/CP, the cognizant DOD Components will consider and incorporate, as appropriate, all applicable National Disclosure Policy (NDP) and DOD technology transfer policy guidelines, and service disclosure policy.

After OSD review, the TA/CP will be used by the cognizant DOD Component as the basis for developing negotiating guidance prior to negotiations with a foreign government.

The TA/CP also requires that the cognizant DOD Component develop a Delegation of Disclosure Authority Letter (DDL) as part of a request for authority to conclude (RAC) an agreement. The DDL will provide detailed guidance regarding releasability of all elements of the system, information or technology in question. Until the DDL has been approved, there can be no promise or actual release of sensitive information or technology. For phased R&D programs, both the TA/CP and the DDL should address time-phased releases of technical data to ensure that sensitive information is protected from premature or unnecessary exposure.

The DDL also will provide specific and detailed guidance to support evaluation of proposed exports/releases of defense articles and technical documents by DOD Components and defense contractors. The attached format may be used as general guidance for preparation of DDLs.

Upon conclusion of an agreement, the DDL will be updated as required and issued by the participating DOD Component to ensure that transfers of defense articles and information by U.S. government or U.S. industry personnel will comply with the TA/CP, NDP, and applicable DOD/Service security policies and procedures.

1. PROGRAM CONCEPT

Briefly describe the basic concept of the program in terms of the overall technical, operational,

and programmatic concept, including, as appropriate, a brief summary of the requirement or threat addressed. If possible, use official military designations. When applied to R&D cooperative programs not related to specific systems, the technical objectives and limits of the cooperative effort should be defined.

**2. NATURE AND SCOPE OF
EFFORT/OBJECTIVES**

State the operational and technical objectives of the proposed program. Indicate specifically:

- A. Nature and scope of the activity (e.g., cooperative research, development, and/or production);
- B. Country or country groups participating, and the anticipated extent of participation by each, including identification of foreign contractors/subcontractors, if known. Differentiate between those that are committed participants and those that are only potential participants;
- C. Program phases involved and, if applicable, quantities to be developed/produced or tested;
- D. Summary of projected benefits to U.S. and other participants: technology, production bases, and military capability (detailed in 3.E);
- E. Cognizant points of contact within the DOD Component headquarters and/or program management organization; and
- F. Major milestone(s) or date(s) by which the assessment will require review or revision.

3. TECHNOLOGY ASSESSMENT

A. Identify the products or technologies involved in the program. This section of the assessment should discuss the topics listed below using the Militarily Critical Technologies List (MCTL) and other applicable DOD technology transfer policies as guides:

1. Design and manufacturing know-how and equipment used for development and production;
2. Systems or components or information used for other purposes (e.g., maintenance or testing) that would allow a recipient to achieve a major operational advance.

(When applicable cite other specific U.S. programs and projects from which technical information or hardware will be provided.)

B. State the classification and NDP category (e.g., Category 3 (R&D)) of U.S. technical data and design and/or manufacturing know-how to be contributed.

C. Provide an evaluation of the foreign availability of comparable systems (considering quality, production capability and costs, if known) and comparable/competing technologies, including:

1. Current/projected capabilities of Warsaw Pact nations;
2. Current/projected capabilities of proposed participants/recipients; and
3. Availability of technologies to either Warsaw Pact or allied participants/recipients from other Free World nations.

D. Identify any previous releases or current programs (e.g., sales, cooperative programs, information exchange) involving the transfer/exchange of this or comparable equipment and technologies.

E. Describe the impact on U.S. and foreign military capability as a result of participation in this program:

1. Identify and describe the extent to which the U.S. system/technology contributes to an advance in the state of the art, or a unique operational advantage. Include, if known, a summary of U.S. investment and R&D/operational lead-time represented; and
2. State the specific contribution of foreign participants to program objectives, project resources, and enhancement of the U.S. military capability and technology base.

F. Describe the potential damage to the U.S. technology position and military capability in the event of a compromise (without regard to potential participants). Explicitly address the impact of loss or

diversion of the system/technology. Specify assumptions and discuss the following:

1. Transfer of a military capability the loss of which would threaten U.S. military effectiveness (e.g., a missile seeker for which we have no countermeasures, or information allowing the development of effective countermeasures negating a primary U.S. technological advantage);
2. Potential compromise of sensitive information revealing systems' weaknesses that could be exploited to defeat or minimize the effectiveness of U.S. systems;
3. Susceptibility to reverse engineering of sensitive design features or fabrication methods;
4. Extent to which the technology that is to be transferred can be diverted and/or exploited for purposes other than the one intended under the specific program (e.g., a technological capability to fabricating laser gyros translates into an ability to implement advanced long-range missiles, precision land and sea navigation, etc.); or
5. Potential impact of participation on U.S. competitive position or U.S. industrial base, if any. (The conclusions of the Industrial Base Factors Analysis may be incorporated by reference.)

G. Estimate the risk of compromise considering:

1. Susceptibility of the technology to diversion or exploitation, and its priority as a target for Warsaw Pact collection, if known. (The degree of susceptibility will depend to a great extent on the exact nature of the technology in question, the form of the transfer, and the indigenous capability of the recipient);
2. The potential participants/recipients, including:
 - a. An evaluation of their security and export control programs (including reference to any specifically related agreements with the U.S.); and
 - b. Their past record of compliance with such agreements and in protecting sensitive/classified information and technology.

4. CONTROL PLAN

This section of the TA/CP is the basis for negotiating guidance for agreements, and ultimately will be implemented in the DDL. Specifically, this

section will identify measures proposed to minimize both the potential risks and damage due to loss, diversion, or compromise of the critical/ classified elements identified in sections 3.A and B above, and will clearly identify any specific limitations/conditions required to protect unique U.S. military operational and technological capabilities. Appropriate measures that should be considered and discussed include:

A. Phased release of information to ensure that information is disseminated only when and to the extent required to conduct the program. (Specifically, production technology should not be released prior to a program decision requiring the use of the technology in question.);

B. Restrictions on releases of specific information to protect U.S. national security interests. Be specific with regard to details of design and production know-how and software, including software documentation, development tools and know-how;

C. Release of specific hardware or software components in modified form, or as completed, tested items;

D. Special security procedures (both government and industrial) to control access to restricted material and information. Also to be considered are:

1. Controls on access of foreign nationals at U.S. facilities; and
2. Procedures to control releases by U.S. personnel at foreign facilities; and

E. Other legal or proprietary limitations on access to and licensed uses of the technology in implementing technical assistance agreements.

NOTES:

1. In some cases, particularly early in R&D programs, the full range of technological alternatives and potential participants may not be fully known. Specific hardware and technical data may not be completely defined, and the nature and availability of end items and technical data can evolve rapidly during a development program. In these cases the TA/CP should define comprehensive technical criteria, in sufficient detail to support release decisions as the program evolves.

2. The TA/CP should be supported by detailed evaluation of the individual elements of hardware

and technical data relating to the program. With this supporting information, the resulting document should be adequate to support any case-by-case evaluation required for program implementation, including commercial and government sales, coproduction, and information exchange programs.

TECHNOLOGY ASSESSMENT/CONTROL PLAN (TA/CP)

Delegation of Disclosure Authority Letter (DDL)

A DDL is required as part of the request for authority to conclude (RAC) an international agreement. The following format should be used for this purpose by cognizant DOD Components. The content of the DDL must conform to the content of paragraphs 3 and 4 of the TA/CP.

While all elements identified should be provided in the general order shown, information should be presented in the clearest and easiest-to-use manner. (For example, for complex systems the usefulness of the DDL may be enhanced if items 5 and 6 are broken out by major subsystem.)

TITLE:

DATE:

1. CLASSIFICATION: Identify highest classification of information to be disclosed.
2. DISCLOSURE METHODS: E.g., oral, visual, or documentary.
3. CATEGORIES PERMITTED: Specify NDP categories to be disclosed/released.
4. SCOPE: Specify who is authorized to release material or information, and to whom disclosure is authorized.
5. AUTHORIZED FOR RELEASE/DISCLOSURE: Describe material/information that can be released or disclosed.
6. NOT AUTHORIZED FOR RELEASE/DISCLOSURE: Describe material/information that cannot be released or disclosed.

NOTE: In addition to providing specific descriptions of releasable and restricted material and information, items 5 and 6 will also specify any conditions or limitations to be imposed (e.g., time-phasing of release, allowable forms for software, identification of items releasable only as finished, tested assemblies, etc.).

7. PROCEDURES: Specify review and release procedures, special security procedures or protective measures to be imposed.
8. REDELEGATION: Specify the extent of redelegation of authority (if any) permitted to subordinate activities.